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HOUSE BILL 242

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO THE MEDICAL USE OF CANNABIS; ENACTING THE LYNN
PIERSON COMPASSIONATE USE ACT; AMENDING PROVISIONS OF THE
CONTROLLED SUBSTANCES ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Lynn Pierson
Compassionate Use Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--
PURPOSE. --

A. The legislature finds that:

(1) in 1978, the legislature passed, and the
governor signed, the Controlled Substances Therapeutic Research
Act, recognizing the validity of the medical research finding
that cannabis may alleviate the ill effects of cancer

1 chemotherapy and glaucoma;

2 (2) since then, additional research has
3 demonstrated the effectiveness of cannabis as a viable
4 treatment for a variety of debilitating medical conditions;

5 (3) New Mexico is a sovereign state imposed
6 with the duty to maintain the health, safety and well-being of
7 its citizens, including those who suffer from debilitating
8 medical conditions;

9 (4) state law should make a distinction
10 between medical and nonmedical use of cannabis. A growing
11 number of states are making that distinction, including Alaska,
12 California, Colorado, Hawaii, Maine, Nevada, Oregon and
13 Washington;

14 (5) although federal law currently does not
15 make a distinction between the medical and nonmedical use of
16 cannabis, states are neither required to enforce federal law
17 nor to prosecute people for engaging in activities prohibited
18 by federal law;

19 (6) practitioners should not be penalized for
20 discussing cannabis as a treatment option for their patients;
21 and

22 (7) seriously ill patients who engage in
23 medical use of cannabis on their treating practitioner's advice
24 should not be arrested or incarcerated for violation of the
25 Controlled Substances Act.

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1 B. The purpose of the Lynn Pierson Compassionate
2 Use Act is to allow the beneficial use of medical cannabis in a
3 regulated system for treating debilitating medical conditions.

4 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
5 Lynn Pierson Compassionate Use Act:

6 A. "adequate supply" means an amount of cannabis
7 possessed by the qualifying patient or collectively possessed
8 between the qualifying patient and the qualifying patient's
9 primary caregiver that is found by rule of the department after
10 consulting with the advisory board pursuant to Section 6 of the
11 Lynn Pierson Compassionate Use Act to be not more than is
12 reasonably necessary to ensure the uninterrupted availability
13 of cannabis for a period of three months for the purpose of
14 alleviating the symptoms of a qualifying patient's debilitating
15 medical condition;

16 B. "debilitating medical condition" means:

- 17 (1) cancer;
- 18 (2) glaucoma;
- 19 (3) epilepsy; or
- 20 (4) positive status for human immunodeficiency
21 virus or acquired immune deficiency syndrome;

22 C. "department" means the department of health;

23 D. "practitioner" means a physician licensed in New
24 Mexico to prescribe and administer drugs that are subject to
25 the Controlled Substances Act;

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1 E. "primary caregiver" means a person who has
2 reached his eighteenth birthday and who has been designated by
3 the patient's practitioner as being necessary to take
4 responsibility for managing the well-being of a qualifying
5 patient with respect to the medical use of cannabis pursuant to
6 the provisions of the Lynn Pierson Compassionate Use Act;

7 F. "qualifying patient" means a person who has been
8 diagnosed by a practitioner as having a debilitating medical
9 condition and has received written certification and a registry
10 identification card issued pursuant to the Lynn Pierson
11 Compassionate Use Act; and

12 G. "written certification" means a statement in the
13 qualifying patient's medical records or a statement signed by a
14 qualifying patient's practitioner that, in the practitioner's
15 professional opinion, the qualifying patient has a debilitating
16 medical condition and that the practitioner believes that the
17 potential health benefits of the medical use of cannabis would
18 likely outweigh the health risks for the qualifying patient. A
19 "written certification" is not valid for more than one year
20 from the date of issuance.

21 Section 4. ~~[NEW MATERIAL]~~ EXEMPTION FROM CRIMINAL AND
22 CIVIL PENALTIES FOR THE MEDICAL USE OF CANNABIS. --

23 A. A qualifying patient shall not be subject to
24 arrest, prosecution or penalty in any manner for the possession
25 of or the medical use of cannabis if the quantity of cannabis

1 does not exceed an adequate supply.

2 B. A qualifying patient's primary caregiver shall
3 not be subject to arrest, prosecution or penalty in any manner
4 for the possession of or the medical use of cannabis if the
5 quantity of cannabis does not exceed an adequate supply.

6 C. Subsection A of this section shall not apply to
7 a qualifying patient under the age of eighteen years, unless:

8 (1) the qualifying patient's practitioner has
9 explained the potential risks and benefits of the medical use
10 of cannabis to the qualifying patient and to a parent, guardian
11 or person having legal custody of the qualifying patient; and

12 (2) a parent, guardian or person having legal
13 custody consents in writing to:

14 (a) allow the qualifying patient's
15 medical use of cannabis;

16 (b) serve as the qualifying patient's
17 primary caregiver; and

18 (c) control the dosage and the frequency
19 of the medical use of cannabis by the qualifying patient.

20 D. A practitioner shall not be subject to arrest or
21 prosecution, penalized in any manner or denied any right or
22 privilege for recommending the medical use of cannabis or
23 providing written certification for the medical use of cannabis
24 to qualifying patients.

25 E. Any property interest that is possessed, owned

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1 or used in connection with the medical use of cannabis, or acts
2 incidental to such use, shall not be harmed, neglected, injured
3 or destroyed while in the possession of state or local law
4 enforcement officials, provided that law enforcement agencies
5 seizing live plants as evidence shall not be responsible for
6 the care and maintenance of the cannabis plants. Any such
7 property interest shall not be forfeited under any state or
8 local law providing for the forfeiture of property except as
9 provided in the Forfeiture Act. Cannabis, paraphernalia or
10 other property seized from a qualifying patient or primary
11 caregiver in connection with the claimed medical use of
12 cannabis shall be returned immediately upon the determination
13 by a court or prosecutor that the qualifying patient or primary
14 caregiver is entitled to the protections of the provisions of
15 the Lynn Pierson Compassionate Use Act, as may be evidenced by
16 a failure to actively investigate the case, a decision not to
17 prosecute, the dismissal of charges or acquittal.

18 F. A person shall not be subject to arrest or
19 prosecution for a cannabis-related offense for simply being in
20 the presence or vicinity of the medical use of cannabis as
21 permitted under the provisions of the Lynn Pierson
22 Compassionate Use Act.

23 Section 5. [NEW MATERIAL] PROHIBITIONS, RESTRICTIONS AND
24 LIMITATIONS ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTY
25 FOR FRAUDULENT REPRESENTATION. --

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1 A. Participation in a medical use of cannabis
2 program by a qualifying patient or primary caregiver does not
3 relieve the qualifying patient or primary caregiver from:

4 (1) criminal prosecution or civil penalties
5 for activities not authorized in the Lynn Pierson Compassionate
6 Use Act;

7 (2) liability for damages or criminal
8 prosecution arising out of the operation of a vehicle while
9 under the influence of cannabis; or

10 (3) criminal prosecution or civil penalty for
11 possession or use of cannabis:

12 (a) in a school bus or public vehicle;

13 (b) on school grounds or property;

14 (c) in the workplace of the qualifying
15 patient's or primary caregiver's employment; or

16 (d) at a public park, recreation center,
17 youth center or other public place.

18 B. A person who makes a fraudulent representation
19 to a law enforcement officer about his participation in a
20 medical use of cannabis program to avoid arrest or prosecution
21 for a cannabis-related offense is guilty of a petty misdemeanor
22 and shall be sentenced in accordance with the provisions of
23 Section 31-19-1 NMSA 1978.

24 Section 6. [NEW MATERIAL] REGISTRY IDENTIFICATION CARDS--
25 ADVISORY BOARD CREATED. --

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1 A. A qualifying patient or primary caregiver
2 qualifies for the legal protections pursuant to Section 4 of
3 the Lynn Pierson Compassionate Use Act only if the qualifying
4 patient or primary caregiver is in possession of a registry
5 identification card.

6 B. No later than October 1, 2003, after consulting
7 with the advisory board pursuant to Subsection I of this
8 section, the department shall promulgate rules:

9 (1) governing the manner in which it will
10 consider applications for registry identification cards, and
11 for renewing registry identification cards, for qualifying
12 patients and primary caregivers; and

13 (2) defining the amount of cannabis that is
14 necessary to constitute an adequate supply.

15 C. The department shall issue registry
16 identification cards to a qualifying patient, and to a primary
17 caregiver for that patient, who submits the following, in
18 accordance with the department's rules:

19 (1) written certification that the person is a
20 qualifying patient;

21 (2) the name, address and the date of birth of
22 the qualifying patient;

23 (3) the name, address and telephone number of
24 the qualifying patient's practitioner; and

25 (4) the name, address and the date of birth of

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1 the qualifying patient's primary caregiver, if any.

2 D. The department shall verify the information
3 contained in an application submitted pursuant to Subsection C
4 of this section, and shall approve or deny an application
5 within thirty days of receipt. The department may deny an
6 application only if the applicant did not provide the
7 information required pursuant to Subsection C of this section,
8 or if the department determines that the information provided
9 is false. A person whose application has been denied shall not
10 reapply for six months from the date of the denial unless
11 otherwise authorized by the department.

12 E. The department shall issue a registry
13 identification card within five days of approving an
14 application, and a card shall expire one year after the date of
15 issuance. A registry identification card shall contain:

16 (1) the name, address and date of birth of the
17 qualifying patient and primary caregiver, if any;

18 (2) the date of issuance and expiration date
19 of the registry identification card; and

20 (3) other information that the department may
21 require by rule.

22 F. A person who possesses a registry identification
23 card shall notify the department of any change in the person's
24 name, address, qualifying patient's practitioner, qualifying
25 patient's primary caregiver or change in status of the

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1 qualifying patient's debilitating medical condition within ten
2 days of the change.

3 G. Possession of, or application for, a registry
4 identification card shall not constitute probable cause or give
5 rise to reasonable suspicion for a governmental agency to
6 search the person or property of the person possessing, or
7 applying for, the card.

8 H. The department shall maintain a confidential
9 file containing the names and addresses of the persons who have
10 either applied for or received a registry identification card.
11 Individual names on the list shall be confidential and not
12 subject to disclosure, except to:

13 (1) authorized employees of the department as
14 necessary to perform the duties of the department pursuant to
15 the provisions of the Lynn Pierson Compassionate Use Act; or

16 (2) authorized employees of state or local law
17 enforcement agencies, but only for the purpose of verifying
18 that a person is lawfully in possession of a registry
19 identification card.

20 I. The secretary of health shall establish an
21 advisory board consisting of five practitioners who are
22 knowledgeable about the medical use of cannabis and who shall
23 be appointed by the secretary from a list proposed by the New
24 Mexico medical society. The advisory board shall:

25 (1) review and recommend medical conditions

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1 for future inclusion as debilitating medical conditions as
2 provided in Section 3 of the Lynn Pierson Compassionate Use
3 Act;

4 (2) issue recommendations concerning rules to
5 be promulgated for the issuance of the registry identification
6 cards; and

7 (3) recommend quantities of cannabis that are
8 necessary to constitute an adequate supply for qualifying
9 patients and primary caregivers.

10 Section 7. Section 30-31-6 NMSA 1978 (being Laws 1972,
11 Chapter 84, Section 6, as amended) is amended to read:

12 "30-31-6. SCHEDULE I.--The following controlled
13 substances are included in Schedule I:

14 A. any of the following opiates, including their
15 isomers, esters, ethers, salts, and salts of isomers, esters
16 and ethers, unless specifically exempted, whenever the
17 existence of these isomers, esters, ethers and salts is
18 possible within the specific chemical designation:

- 19 (1) acetyl methadol;
- 20 (2) allylprodi ne;
- 21 (3) al phacetyl methadol;
- 22 (4) al phameprodi ne;
- 23 (5) al phamethadol;
- 24 (6) benzethi di ne;
- 25 (7) betacetyl methadol;

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- 1 (8) ~~betam~~prodi ne;
- 2 (9) ~~betam~~ethadol ;
- 3 (10) ~~beta~~prodi ne;
- 4 (11) ~~cloni~~ tazene;
- 5 (12) ~~dextromorami~~ de;
- 6 (13) ~~dextrorphan~~;
- 7 (14) ~~di am~~promi de;
- 8 (15) ~~di ethyl thi am~~butene;
- 9 (16) ~~di menoxadol~~ ;
- 10 (17) ~~di mepheptanol~~ ;
- 11 (18) ~~di methyl thi am~~butene;
- 12 (19) ~~di oxaphetyl~~ butyrate;
- 13 (20) ~~di pi~~ panone;
- 14 (21) ~~ethyl methyl thi am~~butene;
- 15 (22) ~~etoni~~ tazene;
- 16 (23) ~~etoxeri~~ di ne;
- 17 (24) ~~furethi~~ di ne;
- 18 (25) ~~hydroxypethi~~ di ne;
- 19 (26) ~~ketobemi~~ done;
- 20 (27) ~~levomorami~~ de;
- 21 (28) ~~levophenacyl morphan~~;
- 22 (29) ~~morpheri~~ di ne;
- 23 (30) ~~noracymethadol~~ ;
- 24 (31) ~~norl~~ evorphanol ;
- 25 (32) ~~normethadone~~;

- 1 (33) norpi panone;
- 2 (34) phenadoxone;
- 3 (35) phenampromi de;
- 4 (36) phenomorphan;
- 5 (37) phenoperi di ne;
- 6 (38) pi ri trami de;
- 7 (39) proheptazi ne;
- 8 (40) properi di ne; and
- 9 (41) racemorami de; [~~and~~]

10 B. any of the following opium derivatives, their
11 salts, isomers and salts of isomers, unless specifically
12 exempted, whenever the existence of these salts, isomers and
13 salts of isomers is possible within the specific chemical
14 designation:

- 15 (1) acetorphi ne;
- 16 (2) acetyl di hydrocodei ne;
- 17 (3) benzyl morphi ne;
- 18 (4) codei ne methyl bromi de;
- 19 (5) codei ne- N- oxi de;
- 20 (6) cyprenorphi ne;
- 21 (7) desomorphi ne;
- 22 (8) di hydromorphi ne;
- 23 (9) etorphi ne;
- 24 (10) heroi n;
- 25 (11) hydromorphi nol ;

- 1 (12) methyl desorphine;
- 2 (13) methyl dihydromorphine;
- 3 (14) morphine methyl bromide;
- 4 (15) morphine methyl sulfonate;
- 5 (16) morphine-N-oxide;
- 6 (17) myorphine;
- 7 (18) nicocodeine;
- 8 (19) nicomorphine;
- 9 (20) normorphine;
- 10 (21) pholcodine; and
- 11 (22) thebacon;

12 C. any material, compound, mixture or preparation
13 which contains any quantity of the following hallucinogenic
14 substances, their salts, isomers and salts of isomers, unless
15 specifically exempted, whenever the existence of these salts,
16 isomers, and salts of isomers is possible within the specific
17 chemical designation:

- 18 (1) 3, 4-methylenedioxy amphetamine;
- 19 (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 20 (3) 3, 4, 5-trimethoxy amphetamine;
- 21 (4) bufotenine;
- 22 (5) diethyl tryptamine;
- 23 (6) dimethyl tryptamine;
- 24 (7) 4-methyl-2, 5-dimethoxy amphetamine;
- 25 (8) ibogaine;

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- 1 (9) lysergic acid diethylamide;
- 2 (10) marijuana;
- 3 (11) mescaline;
- 4 (12) peyote, except as otherwise provided in
- 5 the Controlled Substances Act;
- 6 (13) N-ethyl-3-piperidyl benzilate;
- 7 (14) N-methyl-3-piperidyl benzilate;
- 8 (15) psilocybin;
- 9 (16) psilocyn;
- 10 (17) tetrahydrocannabinols; and
- 11 (18) hashish;

12 D. the enumeration of peyote as a controlled
13 substance does not apply to the use of peyote in bona fide
14 religious ceremonies by a bona fide religious organization, and
15 members of the organization so using peyote are exempt from
16 registration. Any person who manufactures peyote for or
17 distributes peyote to the organization or its members shall
18 comply with the federal Comprehensive Drug Abuse Prevention and
19 Control Act of 1970 and all other requirements of law; and

20 E. the enumeration of marijuana,
21 tetrahydrocannabinols or chemical [~~derivatives~~] derivatives of
22 tetrahydrocannabinol as Schedule I controlled substances does
23 not apply to the use of marijuana, tetrahydrocannabinols or
24 chemical derivatives of tetrahydrocannabinol by certified
25 patients pursuant to the Controlled Substances Therapeutic

1 Research Act or qualifying patients pursuant to the provisions
2 of the Lynn Pierson Compassionate Use Act. "

3 Section 8. Section 30-31-7 NMSA 1978 (being Laws 1972,
4 Chapter 84, Section 7, as amended) is amended to read:

5 "30-31-7. SCHEDULE II. --

6 A. The following controlled substances are included
7 in Schedule II:

8 (1) any of the following substances, except
9 those narcotic drugs listed in other schedules, whether
10 produced directly or indirectly by extraction from substances
11 of vegetable origin, or independently by means of chemical
12 synthesis, or by combination of extraction and chemical
13 synthesis:

14 (a) opium and opiate, and any salt,
15 compound, derivative or preparation of opium or opiate;

16 (b) any salt, compound, isomer,
17 derivative or preparation thereof which is chemically
18 equivalent or identical with any of the substances referred to
19 in Subparagraph (a) of this paragraph, but not including the
20 isoquinoline alkaloids of opium;

21 (c) opium poppy and poppy straw;

22 (d) coca leaves and any salt, compound,
23 derivative or preparation of coca leaves, and any salt,
24 compound, derivative or preparation thereof which is chemically
25 equivalent or identical with any of these substances, but not

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1 including decocainized coca leaves or extractions which do not
2 contain cocaine or ecgonine;

3 (e) marijuana, but only for the use by
4 certified patients pursuant to the Controlled Substances
5 Therapeutic Research Act or qualifying patients pursuant to the
6 provisions of the Lynn Pierson Compassionate Use Act; and

7 (f) tetrahydrocannabinols or chemical
8 derivatives of tetrahydrocannabinol, but only for the use of
9 certified patients pursuant to the Controlled Substances
10 Therapeutic Research Act or qualifying patients pursuant to the
11 provisions of the Lynn Pierson Compassionate Use Act.

12 Marijuana, tetrahydrocannabinols or chemical derivatives
13 of tetrahydrocannabinol shall be considered Schedule II
14 controlled substances only for the purposes enumerated in the
15 Controlled Substances Therapeutic Research Act or the Lynn
16 Pierson Compassionate Use Act;

17 (2) any of the following opiates, including
18 their isomers, esters, ethers, salts and salts of isomers,
19 whenever the existence of these isomers, esters, ethers and
20 salts is possible within the specific chemical designation:

- 21 (a) alphaprodine;
- 22 (b) anileridine;
- 23 (c) bezitramide;
- 24 (d) dihydrocodeine;
- 25 (e) diphenoxylate;

- 1 (f) fentanyl ;
2 (g) hydromorphone;
3 (h) isomethadone;
4 (i) levomethorphan;
5 (j) levorphanol ;
6 (k) meperidine;
7 (l) metazocine;
8 (m) methadone;
9 (n) methadone-- intermediate, 4-cyano-2-
10 di methyl amino-4, 4-diphenyl butane;
11 (o) moramide-- intermediate, 2-methyl-3-
12 morpholino-1, 1-diphenyl-propane-carboxylic acid;
13 (p) oxycodone;
14 (q) pethidine;
15 (r) pethidine-- intermediate-- A, 4-cyano-
16 1-methyl-4-phenyl piperidine;
17 (s) pethidine-- intermediate-- B, ethyl-4-
18 phenyl-piperidine-4-carboxylate;
19 (t) pethidine-- intermediate-- C, 1-
20 methyl-4-phenyl piperidine-4-carboxylic acid;
21 (u) phenazocine;
22 (v) piminodine;
23 (w) racemethorphan; and
24 (x) racemorphan; and
25 (3) unless listed in another schedule, any

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1 material, compound, mixture or preparation which contains any
2 quantity of the following substances having a potential for
3 abuse associated with a stimulant effect on the central nervous
4 system:

5 (a) amphetamine, its salts, optical
6 isomers and salts of its optical isomers;

7 (b) phenmetrazine and its salts;

8 (c) methamphetamine, its salts, isomers
9 and salts of isomers; and

10 (d) methylphenidate.

11 B. Where methadone is prescribed, administered or
12 dispensed by a practitioner of a drug abuse rehabilitation
13 program as defined [~~in Paragraph (3) of Subsection A of Section~~
14 ~~26-2-13 MSA 1978~~] by the department of health while acting in
15 the course of his professional practice, or otherwise lawfully
16 obtained or possessed by a person, such person shall not
17 possess such methadone beyond the date stamped or typed on the
18 label of the container of the methadone, nor shall any person
19 possess methadone except in the container in which it was
20 originally administered or dispensed to such person, and such
21 container [~~must~~] shall include a label showing the name of the
22 prescribing physician or practitioner, the identity of
23 methadone, the name of the ultimate user, the date when the
24 methadone is to be administered to or used or consumed by the
25 named ultimate user shown on the label and a warning on the

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1 label of the methadone container that the ultimate user must
2 use, consume or administer to himself the methadone in such
3 container. Any person who violates this subsection is guilty
4 of a felony and shall be punished by imprisonment for not less
5 than one year nor more than five years, or by a fine of up to
6 five thousand dollars (\$5,000), or both. "

7 Section 9. TEMPORARY PROVISION. --

8 A. During the period between July 1, 2003 and
9 thirty days after the effective date of rules promulgated by
10 the department of health pursuant to Subsection B of Section 6
11 of the Lynn Pierson Compassionate Use Act, a person who would
12 be eligible to participate in the medical use of cannabis
13 program as a qualifying patient, but for the lack of effective
14 rules concerning registry identification cards and adequate
15 supply, may obtain a written certification from a practitioner
16 and upon presentation of that certification to the department
17 of health, the department may issue a temporary certification
18 for participation in the program. The department shall
19 maintain a list of all temporary certificates issued pursuant
20 to this section.

21 B. A person possessing a temporary certificate and
22 the person's primary caregiver are not subject to arrest,
23 prosecution, civil or criminal penalty or denial of any right
24 or privilege for possessing cannabis if the amount of cannabis
25 possessed collectively is not more than the amount that is

1 specified on the temporary certificate issued by the
2 department.

3 C. A practitioner shall not be subject to arrest or
4 prosecution, penalized in any manner or denied any right or
5 privilege for recommending the medical use of cannabis or
6 providing written certification for the medical use of cannabis
7 to a person holding a temporary certificate pursuant to this
8 section.

9 Section 10. SEVERABILITY.--If any part or application of
10 the Lynn Pierson Compassionate Use Act is held invalid, the
11 remainder or its application to other situations or persons
12 shall not be affected.

13 Section 11. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2003.

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